

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1516 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MEHUL SURENDRAKUMAR SHETH

Versus

NOT MENTIONED

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Appearance:

Mr. Asim Pandya for Mr. SI NANAVATI for Petitioner

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 09/05/97

ORAL JUDGEMENT

Admit.

The appellant applied for probate of the Will executed by deceased Surendrakumar Chunilal Sheth, who

died at Sanghana, District-Kheda on 21st October, 1995. He left behind him certain properties. In the Will duly executed by the deceased, the appellant has been appointed as the Executor. The appellant in the capacity of the Executor of the Will took necessary steps to administer the property; both movable and immovable, as per the desire of the deceased expressed in the Will. As per the desire expressed, the Executor has also transferred or divided or distributed the properties amongst the heirs but only the amount of insurance, retirement benefits, gratuity and some amounts which deceased got in cash could not been transferred because the Insurance Company and the master were insisting for a Probate of the Will, and therefore, the appellant was constrained to prefer necessary application for Probate before the City Civil Court at Ahmedabad. Undergoing necessary procedure and hearing the concern authorities, the learned Judge below granted the probate with a condition to furnish personal bound and solvent surety to the tune of Rs. 13,33,000/= for protection of the estates of the deceased. As the condition is imposed, the present appellant has preferred this application for necessary modification in the order. According to the appellant, it was not at all just and proper on the part of the learned Judge to impose such a condition because under the Will, the heirs were entitled to have properties, and strictly in accordance with the Will the properties are transferred and the remaining amounts will be transferred on the basis of the probate.

2. On behalf of legal heirs of the deceased, Mr. Saurin Mehta, learned advocate appeared and submitted that the learned Judge ought not to have imposed the condition and he would have no objection if the order is modified, as prayed for.

3. The City Civil Court, Ahmedabad is governed by Ahmedabad City Civil Court Rules, 1961. As per rule 182, the bond is to be taken in cases of letters of administration or succession certificates. In that rule, nowhere the Probate is referred to. Further, the properties are distributed amongst the heirs and those heirs have no grievance about the distribution already made and against those to be made procuring the probate. In view of the fact, the appeal requires to be allowed and necessary modification in the order, as prayed for, is required to be made.

4. In the result, the order passed by the lower court is modified to the effect that probate of the Will shall be issued in the name of the applicant - Mehul

Surendrakumar Sheth qua the properties of deceased Surendrakumar Chunilal Sheth, mentioned in the schedule and the condition imposed for furnishing the surety is hereby set-aside. No order as to costs.

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Prakash\*